

**DISTRICT OF COLUMBIA**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
941 North Capitol Street, NE Suite 9000  
Washington, DC 20002-4210

<p>DISTRICT OF COLUMBIA DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS Petitioner,</p> <p style="text-align:center">v.</p> <p>LAM V. NGUYEN Respondent</p>	<p>Case No:     CR-I-05-S100720</p>
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**FINAL ORDER**

**I.     Introduction**

This case involves a Notice of Infraction served on Respondent Lam V. Nguyen on December 2, 2005 alleging three violations of D.C. Official Code § 47-2809 for operating a beauty shop without a business license.<sup>1</sup> The violations are alleged to have occurred at a business known as Washington Nails owned by Respondent and located at 6216 Georgia Avenue, N.W. In the Notice of Infraction, the Government alleged that the violations occurred on three successive and days and sought a \$2,000 fine for each day, for a total of \$6,000.

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<sup>1</sup> D.C Official Code § 47-2809 provides in relevant part:

(a) Owners or managers of barbershops, beauty parlors, beauty salons, vanity shops, or shingle shops, by whatsoever name called, where hair cutting, hair dressing, hair dyeing, manicuring, and kindred acts are practiced shall pay a license fee of \$ 60 biennially....

(b) Any license issued pursuant to this section shall be issued as a Class A Public Health: Public Accommodations endorsement to a master business license under the master business license system set forth in subchapter I-A of this chapter.

Respondent filed an answer denying the alleged violations and a hearing was set for January 20, 2006. At the hearing held on that date, Geraldine Owens of the Office of Civil Infractions appeared on behalf of the Government. Clifford Dedrick, the charging inspector (the “Inspector”), testified for the Government. Respondent Lam V. Nguyen appeared on his own behalf. Anh Thi Nguyen, Respondent’s sister who is a manager at the salon, also testified.

At the hearing, the court noted that maximum authorized fine for a first offense of violating D.C. Official Code § 47-2809 by operating a beauty salon without a license is \$500. *See* 16 DCMR 3624.3(a). The Government then moved to amend the Notice of Infraction to seek fines of \$500 for each of the three violations. That motion was granted without objection.

Based on the entire record in this matter, I hereby make the following findings of fact and conclusions of law:

## **II. Findings of Fact**

The inspection of Respondent’s nail salon was conducted as a result of an anonymous written complaint sent to the Government that alleged that the business was being operated without the required licenses. Petitioner’s Exhibit (“PX”) 108.

Inspector Dedrick, who has worked as an inspector for ten years, went to the Property on three consecutive days to observe operation of the business. The first two days were November 3 and November 4, a Thursday and Friday. On these days, he observed the operation of the business through a window from the sidewalk, but did not enter the premises or speak to personnel in the salon. On the third day, a Saturday, he entered the salon and asked to see

licenses. He also took photographs that depicted the salon's equipment, personnel, and services, including a photo of a customer receiving a pedicure. PX 105.

The situation became contentious. A male employee, who had given the Inspector identification, snatched the identification out of his hand. When the Inspector proceeded to the door to leave the premises, the salon manager moved to the door to block his exit. The Inspector then called 311, the non-emergency number for police assistance. After twenty minutes elapsed, and the police did not appear, the Inspector again moved to exit the salon. Another employee went to the door to block his exit. The Inspector called 311 again, and waited, but the police did not appear. Eventually, Inspector left the salon. The Inspector testified that he had called 311 and not 911 because that he did not feel that he was in a dangerous situation requiring an emergency police response.

Respondent was not on the premises on the day of this confrontation. Respondent's sister, who was one of the individuals who blocked the door, claimed that she took this action because the Inspector had not presented credentials identifying himself and they did not know who he was. The Inspector testified that he identified himself. Based in the evidence presented, and demeanor of the witnesses, I find that the Inspector did identify himself as a city inspector. I do no credit the testimony of the salon manger that personnel in the salon did not know he was an inspector conducting a license inspection.<sup>2</sup>

At the time of the inspection, Respondent had a valid occupancy permit, issued June 9, 2005, to operate a nail salon at the Property. PX 100. Respondent's sister, Anh Thi Nguyen, held

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<sup>2</sup> It is undisputed that the Inspector requested to see licenses, a request that would be made by an inspector conducting licensing inspections. In addition, Respondent's salon manager made numerous unsupported accusations which made her overall credibility suspect.

a Cosmetology Specialist Manager's License (Nail) and Washington Nail held a Cosmetology Specialist Salon Owner License (Nail). PX 107 and 108.

Respondent did not have a business license for the salon, as shown by a search of the Business License Division records conducted on November 9, 2005. PX 103 and 104. The evidence clearly establishes that Respondent was operating a nail salon on November 3, 4 and 5, 2005 at the Property without a business license.

Respondent secured a business license to come into compliance on January 11, 2006, about two months after the inspection. RX 200.

### **III. Conclusions of Law**

Although it is undisputed that Respondent lacked a business license at the time the inspection, Respondent contended at the hearing that he should not be found in violation because he was not aware of the business licensing requirement and the inspector should have given him notice and an opportunity to correct before seeking to impose a fine.

The Mayor or Council of the District of Columbia have provided for notice and the opportunity to correct before fines are imposed in certain types of cases <sup>3</sup> For example, persons responsible for correcting a notice of a housing violation issued under Title 14 of the District of Columbia Code of Municipal Regulation must be given a reasonable period of time to correct a

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<sup>3</sup> 16 DCMR 3101.6 states:

Unless otherwise prescribed by law, a Notice of Infraction shall be issued by the Director upon observance of an infraction. When applicable provisions of law require that a respondent be given a certain period of time to abate a violation, a Notice of Infraction shall not be issued until that period of time has elapsed.

violation.<sup>4</sup> However, there are no regulations or statutory provisions requiring notice and an opportunity to correct before fines can be imposed for violations of business licensing requirement under D.C. Official Code § 47-2809.

In view of this, notice of a violation and opportunity to correct would be required before a fine is imposed for business licensing requirement only if this regulatory scheme violates constitutional due process. The test for determining whether a regulatory scheme comports with due process is whether it is rationally related to a legitimate governmental objective. *See Bruno v. D.C. Board of Appeals and Review*, 665 A2d 202, 1995 D.C. App. LEXIS 186 (1995) The imposition of a fine before notice and opportunity to correct to enforce business license requirements clearly meets that test. The prospect of fines promotes compliance with licensing requirements since it deters business owners from operating with impunity without business licenses until caught by one of the District's limited number of inspectors. Thus this regulatory system of fines prior to notice to promotes the legitimate governmental objective of securing compliance with business licensing laws.<sup>5</sup>

In addition, the Government can be authorized to treat each day that an infraction persists as a separate offense in the absence of a contrary statutory or regulatory intent. *Lennon v. United States* 736 A2d. 208, 211 (D.C. 1999) *DOH v. Flowers*, OAH No. I-00-40208 (Final on Reconsideration, June 26, 2001) For example, multiple violations of licensing requirements have been upheld when an inspector has entered a business and confronted an owner about the lack of a licenses but found that the business still lacked needed licenses on subsequent inspections. *DCRA v Bessie Thompson* CR-I-05-S100274 Final Order (2005).

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<sup>4</sup> See 14 DCMR 105.2 (c)

<sup>5</sup> *Bruno v. DOH*, 665 A.2d 202, 204 (D.C. App. 1995)

However, the facts of this case differ because Respondent had no notice of a suspected offense until the third offense was charged. The due process issue this case presents is whether multiple violations of business licensing requirements on successive days should be upheld when Respondent had no notice that the Government was charging a violation until the inspector entered the premises on the third day.

The Supreme Court has prescribed a balancing test to be used in determining what procedural protections are necessary for a particular situation. *Matthews v. Eldridge*, 424 U.S. 319, 333, 47 L.Ed. 2d 18, 96 S.Ct 893 (1976) The Court described the three factors that form the balancing test as follows:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

When applying this test, the three factors that form the balancing test must be considered to determine what procedural safeguards are necessary in a particular situation.<sup>6</sup> This court finds that the imposition of multiple fines before a Respondent has notice of a first offense does not pass this test. First, the private interest involved can be significant. In this case, the Government is seeking fines of \$500 per day for a total of \$1,500. If an inspector walked by a business for several weeks before confronting the operator about the status of licenses, fines could exceed \$10,000. Secondly, once a business owner has been contacted by an Inspector and informed that the Inspector believes that a the business owner lacks necessary licenses, the business owner can take immediate steps to secure the needed license to avoid additional fines for continuing

<sup>6</sup> See *Agomo v. Williams*, 2003 D.C. Super. LEXIS 31, 13 (D.C. Super. Ct. 2003)

operations without a license. If fines are accumulating for observations made by an inspector without notice to the business owner, the owner will not be aware of the need to take steps to remedy a violation and avoid the imposition of additional sanctions.

Finally, and most importantly, the Government's interest in enforcing business license requirements is to promote the public health. Seeking to impose fines for an inspector's observations on the days before he notifies the operator of suspected violations does not promote that interest because the business owner will continue operations without taking steps to remedy the violation until he is informed of the suspected violation. Accordingly, I find that the successive fines in this case do not satisfy the balancing test and will dismiss the violations charged on November 3 and November 4 and find a violation only with respect to the violation charged on November 5, 2006.

We turn now to the appropriate fine for the violation which occurred on November 5, 2005. The fine authorized for a first offense of operating a beauty shop without a license is in violation of District of Columbia Official Code § 47-2809 is \$500. Respondent secured a business license to come into compliance on January 11, 2006, about two months after the inspection.

Normally, evidence of such corrective action would be a mitigating factor taken into account in setting the appropriate fine. *DOH v D.G. Walde* OAH No. DH-I-04-73574 (Final Order 2004) While there is this mitigating factor in this case, it is outweighed by the aggravating factors. Although the inspector in this case was conducting a legitimate inspection to ensure compliance with licensing requirement established to promote the public health, he was subjected to efforts to block his departure and had to resort to calling the police. A business

owner has a variety of ways to legally seek redress for Government action. These means include raising these concerns at a hearing as was done in this case. They do not include attempting to block the exit of Government inspectors or otherwise impeding him in conducting his work. Accordingly, I will impose the maximum authorized fine of \$500. *See* D.C. Official Code §§ 2-1802.02(a)(2) and 2-1801.03(b)(6); 18 U.S.C. § 3553; U.S.S.G. § 3E1.1.

#### **IV. Order**

Based upon the foregoing findings of fact and conclusions of law and the entire record in this matter, it is, this \_\_\_\_\_ day of \_\_\_\_\_, 2006:

**ORDERED**, that Respondents shall pay a total of **FIVE HUNDRED DOLLARS (\$500)** in accordance with the attached instructions within 20 calendar days of the mailing date of this Order (15 days plus 5 days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

**ORDERED**, that if Respondents fail to pay the above amount in full within 20 calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1½ %, per month or portion thereof, starting 20 calendar days after the mailing date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

**ORDERED**, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondents pursuant to D.C.

Official Code § 2-1802.03(i), and the sealing of Respondents' business premises or work sites, pursuant to D.C. Official Code § 2-1801.03(b)(7); and it is further

**ORDERED**, that the appeal rights of any person aggrieved by this Order are stated below.

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May 15, 2006

\_\_\_\_\_/s/\_\_\_\_\_  
Mary Masulla  
Administrative Law Judge